

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0471P

Income Tax

Fiscal Years ending February 4, 1995, February 4, 1996, & February 4 1997

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The negligence penalty was assessed on a gross income tax assessment resulting from an audit conducted for the fiscal years ending February 4, 1995, February 4, 1996, and February 4, 1997.

The taxpayer is a specialty retailer of vitamin and mineral supplements, sports nutrition products and herbs, and other health related products. The taxpayer only operates retail stores. Other sister companies manufacture the products sold in the taxpayer's stores. The taxpayer has numerous retail stores in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the taxpayer had significant turnover in personnel, and, the regulations are ambiguous with regard to the sale of purchasing cards (intangibles).

The Department points out that regulation 45 IAC 1-1-108 clearly states retail sales involving intangible property are taxable at the high rate of gross income tax. Further, the issue is a repeat issue from the previous audit.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.